

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

2:09-CR-78 JCM (RJJ)

Plaintiff,

V.

SAMUEL DAVIS and SHAWN RICE.

Defendants.

ORDER

Presently before the court are the report and recommendations of United States Magistrate Judge Robert J. Johnston. (Doc. # 169, #170, and #171).

Upon reviewing defendant Shawn Rice's motion to dismiss (doc. # 139), Judge Johnston recommended that the motion be denied.

18 Judge Johnston's recommendation is pursuant to Local Criminal Rule 47-9, which states that
19 “[t]he failure of a moving party to file points and authorities in support of the motion shall constitute
20 a consent to the denial of the motion.” This court is inclined to deny the motion on the grounds that
21 defendant Rice consented to the denial by failing to file points and authorities, and not providing the
22 court with any supporting statutes or case law.

23 Further, the defendant asserts that his charge should be dismissed because he reserved his
24 rights under UCC § 1-308. This court agrees with judge Johnston's holding, that since there is no
25 valid sales contract or commercial transaction, UCC § 1-308 does not apply.

26 Judge Johnston held that Rice's assertion that the court and the government have violated
27 18 U.S.C. §§ 241 and 242 was without merit, due to the fact that defendant failed to cite to any facts

1 or law that support these allegations. This court agrees.

2 With regards to defendant Rice's motion for subpoena duces tecum or, in the alternative, to
3 dismiss with prejudice (doc. #72), and after considering the government's response (doc. #74), judge
4 Johnston recommended that the motion be denied.

5 The defendant asserted that the government should produce valid letters of marque and
6 accompanying documentation, or in the alternative, that the officers or agencies that arrested him
7 lacked a valid letter of marque. In Judge Johnston's recommendation, he concluded that letters of
8 marque not only do not exist any longer, but do not remotely apply to this case. Further, he held that
9 under 18 U.S.C. 3231, the district court properly had original jurisdiction over defendants, like Rice,
10 who are accused of violating United States laws.

11 Lastly, upon judge Johnston's review of the defendant's motion to dismiss for lack of subject
12 matter jurisdiction, lodgment of proof of priority claim and relief requested and memorandum of
13 maxims (doc. #115), and of the government's response (doc. #116), he recommended that the motion
14 be denied.

15 Defendant's motion fails due to the facts already stated, that the district court has jurisdiction
16 under 18 U.S.C. § 3231 over defendants who violate United States laws such as Rice, and that under
17 Local Criminal Rule 47-9, a failure to file points and authorities in support of a motion "shall
18 constitute a consent to the denial of the motion."

19 Pursuant to Local Rule IB 3-2, the parties may file specific written objections to this report
20 and recommendation within fourteen days of receipt. Objections to the report and recommendation
21 were due on October 4, 2010. To date, no objections have been filed.

22 Upon review of the magistrate judge's findings and recommendations (Doc. #169, #170, and
23 #171) and there not being any objections,

24 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that United States Magistrate
25 Judge Robert J. Johnston's report and recommendations (Doc. #169, #170, and #171) are
26 AFFIRMED in their entirety. The defendant's motion to dismiss (#139), motion for subpoena duces
27 tecum or, in the alternative, to dismiss with prejudice (doc. #72), and motion to dismiss for lack of
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1 subject matter jurisdiction, lodgment of proof of priority claim and relief requested and
2 memorandum of maxims (doc. #115) are DENIED.

3 DATED October 29, 2010.

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5 *James C. Mahan*
6 **UNITED STATES DISTRICT JUDGE**
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